



STATE OF MISSOURI
OFFICE OF ADMINISTRATION
DIVISION OF PURCHASING AND MATERIALS MANAGEMENT (DPMM)
INVITATION FOR BID (IFB)

IFB NO.: B3E07045
TITLE: Medical Care Utilization Review
ISSUE DATE: 09/11/06

REQ NO.: NR 375 D7000000002
BUYER: John Hall
PHONE NO.: (573) 522-1620
E-MAIL: john.hall@oa.mo.gov

RETURN BID NO LATER THAN: 09/29/06 AT 2:00 PM CENTRAL TIME

MAILING INSTRUCTIONS: Print or type **IFB Number** and **Return Due Date** on the lower left hand corner of the envelope or package. Delivered sealed bids must be in DPMM office (301 W High Street, Room 630) by the return date and time.

(U.S. Mail)	or	(Courier Service)
RETURN BID TO: DPMM		DPMM
PO BOX 809		301 WEST HIGH STREET, ROOM 630
JEFFERSON CITY MO 65102-0809		JEFFERSON CITY MO 65101

CONTRACT PERIOD: 01/01/07 through 12/31/07

DELIVER SUPPLIES/SERVICES FOB (Free On Board) DESTINATION TO THE FOLLOWING ADDRESS:

Department of Insurance, Financial Institutions & Professional Registration
301 W. High St.
Jefferson City, MO 65101

The bidder hereby declares understanding, agreement and certification of compliance to provide the items and/or services, at the prices quoted, in accordance with all requirements and specifications contained herein and the Terms and Conditions Invitation for Bid (Revised 02/10/06). The bidder further agrees that the language of this IFB shall govern in the event of a conflict with his/her bid. The bidder further agrees that upon receipt of an authorized purchase order from the Division of Purchasing and Materials Management or when a Notice of Award is signed and issued by an authorized official of the State of Missouri, a binding contract shall exist between the bidder and the State of Missouri.

SIGNATURE REQUIRED

DOING BUSINESS AS (DBA) NAME		LEGAL NAME OF ENTITY/INDIVIDUAL FILED WITH IRS FOR THIS TAX ID NO.	
MAILING ADDRESS		IRS FORM 1099 MAILING ADDRESS	
CITY, STATE, ZIP CODE		CITY, STATE, ZIP CODE	

CONTACT PERSON		EMAIL ADDRESS	
PHONE NUMBER		FAX NUMBER	
TAXPAYER ID NUMBER (TIN)	TAXPAYER ID (TIN) TYPE (CHECK ONE) ___ FEIN ___ SSN	VENDOR NUMBER (IF KNOWN)	
VENDOR TAX FILING TYPE WITH IRS (CHECK ONE) ___ Corporation ___ Individual ___ State/Local Government ___ Partnership ___ Sole Proprietor ___ Other _____ <div style="text-align: right; font-size: small;">(NOTE: LLC IS NOT A VALID TAX FILING TYPE.)</div>			
AUTHORIZED SIGNATURE		DATE	
PRINTED NAME		TITLE	

1. INTRODUCTION AND GENERAL INFORMATION

1.1 Introduction:

- 1.1.1 This document constitutes an invitation for competitive, sealed bids for the provision of Medical Care Utilization Review services as set forth herein.
- 1.1.2 Organization - This document, referred to as an Invitation for Bid (IFB), is divided into the following parts:
 - 1) Introduction and General Information
 - 2) Contractual Requirements
 - 3) Bid Submission Information
 - 4) Pricing Page
 - 5) Exhibits A - C
 - 6) Terms and Conditions

1.2 Background Information:

- 1.2.1 The Department of Insurance, Financial Institutions, and Professional Registration has previously contracted for these services through C302047001 which expires 12/31/06. A copy of that contract can be viewed and printed from the Division of Purchasing and Materials Management's **Public Record Search and Retrieval System** located on the Internet at: <http://www.oa.mo.gov/purch>. In addition, all bid and evaluation documentation leading to the award of that expiring contract may also be viewed and printed from the Division of Purchasing and Materials Management's **Public Record Search and Retrieval System**. Please reference the Bid number B3E02047 or the contract number C302047001 when searching for these documents.

2. CONTRACTUAL REQUIREMENTS

2.1 General Requirements:

- 2.1.1 The contractor shall provide Medical Care Utilization Review Services for the Department of Insurance, Financial Institutions, and Professional Registration (hereinafter referred to as the state agency), in accordance with the provisions and requirements stated herein.
- 2.1.2 The contractor shall perform all services on an as needed, if needed basis and to the sole satisfaction of the state agency.
- 2.1.3 The state agency shall make no guarantee as to a minimum or maximum amount of services or level of work which may be required. However, the state agency estimates that the contractor may review between one (1) and four (4) medical cases per month (approximately sixty (60) hours annually).
- 2.1.4 Unless otherwise specified herein, the contractor shall furnish all material, labor, facilities, equipment, and supplies necessary to perform the services required herein.

2.2 Performance Requirements:

- 2.2.1 Unless otherwise mutually agreed upon between the contractor and the state agency, the state agency will ship medical cases for review to the contract.
- 2.2.2 The contractor shall review medical cases submitted by the state agency in order to establish the following:
 - a. Whether an admission, availability of care, continued stay, and other health care services meet the requirements for medical necessity, appropriateness, health care setting, level of care, and effectiveness.
 - b. The clinical necessity, appropriateness, efficacy, and efficiency of health care services, procedures, and settings.
- 2.2.3 In addition to medical case review, the contractor shall perform, but not necessarily be limited to, the following tasks:
 - a. Perform a pattern analysis of medical case decisions upon state agency request.
 - b. Meet with state agency personnel in Jefferson City, Missouri on a quarterly basis and/or as requested by the state agency.
 - c. Within twenty (20) calendar days of the contractor's receipt of the state agency's request for medical case review, provide a written response to the state agency stating the contractor's expert medical opinion with justification supported by the medical records about the medical necessity and quality of medical care.
 - 1) If the state agency requires an expedited review, such review must be completed within three (3) calendar days.
- 2.2.4 The contractor's Medical Director must be available for discussion with the state agency regarding specific medical cases under review.

2.3 Staffing Requirements:

- 2.3.1 The contractor's provided personnel shall, at a minimum, comply with the following requirements:

- a. The contractor must provide licensed, accredited or certified clinical peers as defined by Section 376.1350(5), RSMo. to review each medical case.
- b. The contractor's personnel must be licensed according to the laws of the State of Missouri to provide health care services as defined by Section 376.1350(21), RSMo.
- c. The contractor's personnel must have no history of disciplinary action against them by their licensing entity.

2.3.2 The contractor shall maintain and have the following type of personnel available:

- a. The contractor's available personnel must include at least two (2) health care professionals in each of the following areas of specialty: General Medicine, Family Medicine, Internal Medicine, Obstetrics/Gynecology, Neurology, Dermatology, Physical Medicine/Rehabilitation, Chiropractic Care, Podiatry, Vision Care, Allergy, Cardiology, Endocrinology, Gastroenterology, Hematology, Oncology, Psychology, Infectious Disease, Nephrology, Ophthalmology, Orthopedics, Otolaryngology, Pediatric, Pulmonary Disease, Rheumatology, Urology, General Surgery, Neurosurgery, Plastic Surgery, and Thoracic Surgery.
- b. The contractor's available personnel must include health care professionals from different geographical areas of the State of Missouri (e.g. rural and urban settings), and from different working environments (e.g. physician offices, hospital inpatient and outpatient facilities, nursing homes, home health care treatment, specialized treatment centers, and managed care settings);
- c. The contractor must maintain a staff of nursing reviewers;
- d. The contractor must maintain a trained panel of allopathic, osteopathic, and chiropractic physician reviewers.

2.3.3 The contractor must be certified by the state agency as a utilization review agent pursuant to RSMo. 374.503.

2.3.4 The contractor must possess experience as a utilization review agent.

2.3.5 The contractor shall only utilize personnel in the performance of the services who are authorized to work in the United States in accordance with applicable federal and state laws and regulations.

2.4 Additional Requirements:

2.4.1 The contractor shall not have a conflict of interest or any appearance of a conflict of interest when assigning personnel to review cases.

2.4.2 The contractor shall not have a significant financial relationship with any health carrier.

- a. A significant financial relationship shall be defined as funding from a health carrier of greater than 10% of the contractor's entire budget.

2.4.3 The contractor shall not have any member of its Board of Directors serve on any health carrier's Board of Directors.

2.5 Invoicing and Payment Requirements:

2.5.1 Immediately upon award of the contract, the contractor needs to submit or must have already submitted a properly completed State Vendor ACH/EFT Application, since the State of Missouri intends to make contract payments through Electronic Funds Transfer.

- a. If not already submitted, the contractor needs to obtain a copy of the State Vendor ACH/EFT Application and completion instructions from the Internet at:

<http://www.oa.mo.gov/purch/vendorinfo/vendorach.pdf>

- b. The contractor must submit invoices on the contractor's original descriptive business invoice form and must use a unique invoice number with each invoice submitted. The unique invoice number will be listed on the State of Missouri's EFT addendum record to enable the contractor to properly apply the state agency's payment to the invoice submitted.

- 2.5.2 Invoicing – The contractor shall submit itemized invoices of completed medical case reviews to the following address:

Department of Insurance, Financial Institutions & Professional Registration
Attention: Mary Kempker, Director, Consumer Affairs Division
P. O. Box 690
Jefferson City, MO 65102

- 2.5.3 The contractor's invoice must be itemized by listing each specific medical case and the total number of hours worked for each specific medical case.

- 2.5.4 Payments - The contractor shall be paid in accordance with the firm, fixed hourly price indicated on the pricing page of this document.

- a. The firm, fixed hourly price shall be prorated in fifteen (15) minute increments of hourly time that the contractor actually provided services.

- 2.5.5 Other than the payments specified above, no other payments shall be made to the contractor for any reason whatsoever.

2.6 Other Contractual Requirements:

- 2.6.1 Contract - A binding contract shall consist of: (1) the IFB and any amendments thereto, (2) the contractor's response (bid) to the IFB, (3) clarification of the bid, if any, and (4) the Division of Purchasing and Materials Management's acceptance of the response (bid) by "notice of award" or by "purchase order". All Exhibits and Attachments included in the IFB shall be incorporated into the contract by reference.

- a. A notice of award issued by the State of Missouri does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services for the State of Missouri, the contractor must receive a properly authorized purchase order unless the purchase is equal to or less than \$3,000. State purchases equal to or less than \$3,000 may be processed with a purchase order or other form of authorization given to the contractor at the discretion of the state agency.
- b. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein.
- c. Any change to the contract, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and the Division of Purchasing and Materials Management or by a modified purchase order prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification to the contract.

- 2.6.2 Contract Period - The original contract period shall be as stated on page 1 of the Invitation for Bid (IFB). The contract shall not bind, nor purport to bind, the state for any contractual commitment in excess of the original contract period. The Division of Purchasing and Materials Management shall have the right, at its sole option, to renew the contract for four (4) additional one-year periods, or any portion thereof. In the event the Division of Purchasing and Materials Management exercises such right, all terms and conditions, requirements and specifications of the contract shall remain the same and apply during the renewal period, pursuant to applicable option clauses of this document.
- 2.6.3 Renewal Periods - If the option for renewal is exercised by the Division of Purchasing and Materials Management, the contractor shall agree that the prices for the renewal period shall not exceed the maximum price for the applicable renewal period stated on the Pricing Page of the contract.
- a. If renewal prices are not provided, then prices during renewal periods shall be the same as during the original contract period.
 - b. The Division of Purchasing and Materials Management does not automatically exercise its option for renewal based upon the maximum price and reserves the right to offer or to request renewal of the contract at a price less than the maximum price stated.
- 2.6.4 Termination - The Division of Purchasing and Materials Management reserves the right to terminate the contract at any time, for the convenience of the State of Missouri, without penalty or recourse, by giving written notice to the contractor at least thirty (30) calendar days prior to the effective date of such termination. The contractor shall be entitled to receive just and equitable compensation for services and/or supplies delivered to and accepted by the State of Missouri pursuant to the contract prior to the effective date of termination.
- 2.6.5 Contractor Liability - The contractor shall be responsible for any and all personal injury (including death) or property damage as a result of the contractor's negligence involving any equipment or service provided under the terms and conditions, requirements and specifications of the contract. In addition, the contractor assumes the obligation to save the State of Missouri, including its agencies, employees, and assignees, from every expense, liability, or payment arising out of such negligent act.
- a. The contractor also agrees to hold the State of Missouri, including its agencies, employees, and assignees, harmless for any negligent act or omission committed by any subcontractor or other person employed by or under the supervision of the contractor under the terms of the contract.
 - b. The contractor shall not be responsible for any injury or damage occurring as a result of any negligent act or omission committed by the State of Missouri, including its agencies, employees, and assignees.
 - c. Under no circumstances shall the contractor be liable for any of the following: (1) third party claims against the state for losses or damages (other than those listed above); or (2) economic consequential damages (including lost profits or savings) or incidental damages, even if the contractor is informed of their possibility.
- 2.6.6 Insurance - The contractor shall understand and agree that the State of Missouri cannot save and hold harmless and/or indemnify the contractor or employees against any liability incurred or arising as a result of any activity of the contractor or any activity of the contractor's employees related to the contractor's performance under the contract. Therefore, the contractor must acquire and maintain adequate liability insurance in the form(s) and amount(s) sufficient to protect the State of Missouri, its agencies, its employees, its clients, and the general public against any such loss, damage and/or expense related to his/her performance under the contract.
- 2.6.7 Subcontractors - Any subcontracts for the products/services described herein must include appropriate provisions and contractual obligations to ensure the successful fulfillment of all contractual obligations agreed to by the contractor and the State of Missouri and to ensure that the State of Missouri is

indemnified, saved, and held harmless from and against any and all claims of damage, loss, and cost (including attorney fees) of any kind related to a subcontract in those matters described in the contract between the State of Missouri and the contractor.

- a. The contractor shall expressly understand and agree that he/she shall assume and be solely responsible for all legal and financial responsibilities related to the execution of a subcontract.
- b. The contractor shall agree and understand that utilization of a subcontractor to provide any of the products/services in the contract shall in no way relieve the contractor of the responsibility for providing the products/services as described and set forth herein.
- c. The contractor must obtain the approval of the State of Missouri prior to establishing any new subcontracting arrangements and before changing any subcontractors. The approval shall not be arbitrarily withheld.

2.6.8 Substitution of Personnel - The contractor agrees and understands that the State of Missouri's agreement to the contract is predicated in part on the utilization of the specific individual(s) and/or personnel qualifications identified in the bid. Therefore, the contractor agrees that no substitution of such specific individual(s) and/or personnel qualifications shall be made without the prior written approval of the state agency. The contractor further agrees that any substitution made pursuant to this paragraph must be equal or better than originally proposed and that the state agency's approval of a substitution shall not be construed as an acceptance of the substitution's performance potential. The State of Missouri agrees that an approval of a substitution will not be unreasonably withheld.

2.6.9 Contractor Status - The contractor represents himself or herself to be an independent contractor offering such services to the general public and shall not represent himself/herself or his/her employees to be an employee of the State of Missouri. Therefore, the contractor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save, and hold the State of Missouri, its officers, agents, and employees, harmless from and against, any and all loss; cost (including attorney fees); and damage of any kind related to such matters.

2.6.10 Coordination - The contractor shall fully coordinate all contract activities with those activities of the state agency. As the work of the contractor progresses, advice and information on matters covered by the contract shall be made available by the contractor to the state agency or the Division of Purchasing and Materials Management throughout the effective period of the contract.

2.6.11 Property of State - All reports, documentation, and material developed or acquired by the contractor as a direct requirement specified in the contract shall become the property of the State of Missouri. Upon expiration, termination, or cancellation of the contract, all documents, data, reports, supplies, equipment, and accomplishments prepared, furnished or completed by the contractor pursuant to the terms of the contract shall become the property of the state agency.

2.6.12 Confidentiality:

- a. The contractor shall agree and understand that all discussions with the contractor and all information gained by the contractor as a result of the contractor's performance under the contract shall be confidential and that no reports, documentation, or material prepared as required by the contract shall be released to the public without the prior written consent of the state agency.
- b. The contractor shall maintain strict confidentiality of all patient and client information or records supplied to the contractor by the state agency or that the contractor establishes as a result of contract activities. The contents of such records, including the contractor's review, shall not be disclosed or submitted to anyone other than the state agency.

- 1) The contractor assumes liability for all disclosures of confidential information by the contractor and/or the contractor's/provider's subcontractors and employees.
- 2) The contractor agrees to comply with all applicable provisions of the Federal Standards for Privacy of Individually Identifiable Health Information (45 C.F.R. Parts 160 and 164).

2.7 Business Associate Provisions:

2.7.1 Health Insurance Portability and Accountability Act of 1996 (HIPAA) - The state agency is subject to and must comply with provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all regulations promulgated pursuant to authority granted therein. The contractor constitutes a "Business Associate" of the state agency as such term is defined in the Code of Federal Regulations (CFR) at 45 CFR 160.103. Therefore, the term, "contractor" as used in this section shall mean "Business Associate."

- a. The contractor shall agree and understand that for purposes of the Business Associate Provisions contained herein, terms used but not otherwise defined shall have the same meaning as those terms defined in 45 CFR parts 160 and 164, including, but not limited to the following:
 - 1) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
 - 2) "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR part 164, subpart C.
 - 3) "Enforcement Rule" shall mean the HIPAA Administrative Simplification: Enforcement; Final Rule at 45 CFR parts 160 and 164.
 - 4) "Individual" shall have the same meaning as the term "individual" in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502 (g).
 - 5) "Protected Health Information" as defined in 45 CFR 160.103, shall mean individually identifiable health information:
 - (1) Except as provided in paragraph (2) of this definition, that is: (i) Transmitted by electronic media; or (ii) Maintained in electronic media; or (iii) Transmitted or maintained in any other form or medium.
 - (2) Protected Health Information excludes individually identifiable health information in (i) Education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; (ii) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); and (iii) Employment records held by a covered entity [state agency] in its role as employer.
 - 6) "Electronic Protected Health Information" shall mean information that comes within paragraphs (1)(i) or (1)(ii) of the definition of Protected Health Information as specified above.
 - 7) Access, administrative safeguards, confidentiality, covered entity, data aggregation, designated record set, disclosure, hybrid entity, information system, physical safeguards, required by law, technical safeguards, use and workforce shall have the same meanings as defined in 45 CFR 160.103, 164.103, 164.304, and 164.501 and HIPAA.
- b. The contractor agrees and understands that wherever in this document the term Protected Health Information is used, it shall also be deemed to include Electronic Protected Health Information.
- c. The contractor must appropriately safeguard Protected Health Information which the contractor receives from or creates or receives on behalf of the state agency. To provide reasonable assurance of appropriate safeguards, the contractor shall comply with the business associate provisions stated herein.
- d. The state agency and the contractor agree to amend the contract as is necessary for the parties to comply with the requirements of HIPAA and the Privacy Rule, Security Rule, and Enforcement Rule (hereinafter referenced as the regulations promulgated thereunder).

2.7.2 Permitted uses and disclosures of Protected Health Information:

- a. The contractor may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the state agency as specified in the contract, provided that such use or disclosure would not violate HIPAA and the regulations promulgated thereunder.
- b. The contractor may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1) and shall notify the state agency by no later than ten (10) calendar days after the contractor becomes aware of the disclosure of the Protected Health Information.
- c. If required to properly perform the contract and subject to the terms of the contract, the contractor may use or disclose Protected Health Information if necessary for the proper management and administration of the contractor's business.
- d. If the disclosure is required by law, the contractor may disclose Protected Health Information to carry out the legal responsibilities of the contractor.

2.7.3 Obligations of the contractor:

- a. The contractor shall not use or disclose Protected Health Information other than as permitted or required by the contract or as otherwise required by law.
- b. The contractor shall use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by the contract. Such safeguards may include, but shall not be limited to:
 - 1) Workforce training on the appropriate uses and disclosures of Protected Health Information pursuant to the terms of the contract.
 - 2) Policies and procedures implemented by the contractor to prevent inappropriate uses and disclosures of Protected Health Information by its workforce.
 - 3) Any other safeguards necessary to prevent the inappropriate use or disclosure of Protected Health Information.
- c. With respect to Electronic Protected Health Information, the contractor shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic Protected Health Information that contractor creates, receives, maintains or transmits on behalf of the state agency.
- d. The contractor shall require that any agent or subcontractor to whom the contractor provides any Protected Health Information received from, created by, or received by the contractor pursuant to the contract, also agrees to the same restrictions and conditions stated herein that apply to the contractor with respect to such information.
- e. By no later than ten (10) calendar days of receipt of a written request from the state agency, or as otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the state agency, the contractor shall make the contractor's internal practices, books, and records, including policies and procedures and Protected Health Information relating to the use and disclosure of Protected Health Information received from, created by, or received by the contractor on behalf of the state agency available to the state agency and/or to the Secretary of the Department of Health and Human Services or designee for purposes of determining compliance with HIPAA and the regulations promulgated thereunder.
- f. The contractor shall document any disclosures and information related to such disclosures of Protected Health Information as would be required for the state agency to respond to a request by an individual for an accounting of disclosures of Protected Health Information in accordance with 45

CFR 164.528. By no later than five (5) calendar days of receipt of a written request from the state agency, or as otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the state agency, the contractor shall provide an accounting of disclosures of Protected Health Information regarding an individual to the state agency.

- g. In order to meet the requirements under 45 CFR 164.524 regarding an individual's right of access, the contractor shall, within five (5) calendar days following a state agency request, or as otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the state agency, provide the state agency access to the Protected Health Information in an individual's designated record set. However, if requested by the state agency, the contractor shall provide access to the Protected Health Information in a designated record set directly to the individual for whom such information relates
- h. At the direction of the state agency, the contractor shall promptly make any amendment(s) to Protected Health Information in a designated record set pursuant to 45 CFR 164.526.
- i. The contractor shall report to the state agency's Security Officer any security incident immediately upon becoming aware of such incident and shall take immediate action to stop the continuation of any such incident. For purposes of this paragraph, security incident shall mean the attempted or successful unauthorized access, use, modification or destruction of information or interference with systems operations in an information system. This does not include trivial incidents that occur on a daily basis, such as scans, "pings," or unsuccessful attempts that do not penetrate computer networks or servers or result in interference with system operations. By no later than five (5) days after the contractor becomes aware of such incident, the contractor shall provide the state agency's Security Officer with a description of any remedial action taken to mitigate any harmful effect of such incident and a proposed written plan of action for approval that describes plans for preventing any such future security incidents.
- j. The contractor shall report to the state agency's Privacy Officer any unauthorized use or disclosure of Protected Health Information not permitted or required as stated herein immediately upon becoming aware of such use or disclosure and shall take immediate action to stop the unauthorized use or disclosure. By no later than five (5) calendar days after the contractor becomes aware of such use or disclosure, the contractor shall provide the state agency's Privacy Officer with a written description of any remedial action taken to mitigate any harmful effect of such disclosure and a proposed written plan of action for approval that describes plans for preventing any such future unauthorized uses or disclosures
- k. Notwithstanding any provisions of the Terms and Conditions attached hereto, in order to meet the requirements under HIPAA and the regulations promulgated thereunder, the contractor shall keep and retain adequate, accurate, and complete records of the documentation required under these provisions for a minimum of six (6) years as specified in 45 CFR part 164.

2.7.4 Obligations of the State Agency:

- a. The state agency shall notify the contractor of limitation(s) that may affect the contractor's use or disclosure of Protected Health Information, by providing the contractor with the state agency's notice of privacy practices in accordance with 45 CFR 164.520.
- b. The state agency shall notify the contractor of any changes in, or revocation of, authorization by an Individual to use or disclose Protected Health Information.
- c. The state agency shall notify the contractor of any restriction to the use or disclosure of Protected Health Information that the state agency has agreed to in accordance with 45 CFR 164.522.

- d. The state agency shall not request the contractor to use or disclose Protected Health Information in any manner that would not be permissible under HIPAA and the regulations promulgated thereunder.

2.7.5 Expiration/Termination/Cancellation - Except as provided in the subparagraph below, upon the expiration, termination, or cancellation of the contract for any reason, the contractor shall, at the discretion of the state agency, either return to the state agency or destroy all Protected Health Information received by the contractor from the state agency, or created or received by the contractor on behalf of the state agency, and shall not retain any copies of such Protected Health Information. This provision shall also apply to Protected Health Information that is in the possession of subcontractors or agents of the contractor

- a. In the event the state agency determines that returning or destroying the Protected Health Information is not feasible, the contractor shall extend the protections of the contract to the Protected Health Information for as long as the contractor maintains the Protected Health Information and shall limit the use and disclosure of the Protected Health Information to those purposes that made return or destruction of the information infeasible. If at any time it becomes feasible to return or destroy any such Protected Health Information maintained pursuant to this paragraph, the contractor must notify the state agency and obtain instructions from the state agency for either the return or destruction of the Protected Health Information.

2.7.6 Breach of Contract– In the event the contractor is in breach of contract with regard to the business associate provisions included herein, the contractor agrees and understands that in addition to the requirements of the contract related to cancellation of contract, if the state agency determines that cancellation of the contract is not feasible, the State of Missouri may elect not to cancel the contract, but the state agency shall report the contractual breach to the Secretary of the Department of Health and Human Services.

3. BID SUBMISSION INFORMATION

3.1 Submission of Bids:

- 3.1.1 On-line Bid - If a Premium registered bidder is responding electronically through the On-line Bidding/Vendor Registration System web site, in addition to completing the on-line pricing, the Premium registered bidder should submit completed Exhibits, forms, and other information concerning the bid **(including completed Pricing Pages, for renewal period pricing)** as an attachment to the electronic bid. Instructions on how to enter a Premium Registration and how to respond to a bid on-line are available on the On-Line Bidding/Vendor Registration System website at: <https://www.moolb.mo.gov>.
- The Exhibits, forms, and Pricing Pages provided herein can be saved into a word processing document, completed by a Premium registered bidder, and then sent as an attachment to the electronic submission. Other information requested or required may be sent as an attachment. Additional instructions for submitting electronic attachments are on the On-line Bidding/Vendor Registration System web site. Be sure to include the bid number, company name, and a contact name on any electronic attachments.
 - In addition, a Premium registered bidder may submit the Exhibits, forms, Pricing Pages, etc., through mail or courier service. However, any such submission must be received prior to the specified closing date and time.
 - If a Premium registered bidder submits an electronic and hard copy bid response and if such responses are not identical, the bidder should explain which response is valid. In the absence of an explanation, the State of Missouri shall consider the response which serves its best interest.
- 3.1.2 Mail Bid - If the bidder is responding through the mail, the bidder should include completed Exhibits, forms, and other information concerning the bid (including completed Pricing Pages) with the mailed response.
- The bid should be page numbered.
 - Recycled Products - The State of Missouri recognizes the limited nature of our resources and the leadership role of government agencies in regard to the environment. Accordingly, the bidder is requested, but not required, to print the bid double sided using recycled paper, if possible, and minimize or eliminate the use of non-recyclable materials such as plastic report covers, plastic dividers, vinyl sleeves, and binding. Lengthy bids may be submitted using printer or other loose leaf paper in a notebook or binder.
 - The bidder should include three (3) additional copies along with their original bid. The front cover of the original bid should be labeled "original" and the front cover of all copies should be labeled "copy".
- 3.1.3 Open Records - The bid shall be considered an open record after the bids are opened pursuant to Section RSMo 610.021. Therefore, the bidder is advised not to include any information that the bidder does not want to be viewed by the public, including personal identifying information such as social security numbers.
- Additionally, after a contract is executed or all bids are rejected, the bids are scanned into the Division of Purchasing and Materials Management imaging system. The scanned information will be able for viewing through the Internet from the Division of Purchasing and Materials Management Public Record Search system.
 - In preparing a bid, the bidder should be mindful of document preparation efforts for imaging purposes and storage capacity that will be required to image the bids and should limit bid content to items that provide substance, quality of content, and clarity of information.
- 3.1.4 To facilitate the evaluation process, the bidder is encouraged to submit bid information by sections that correspond with the individual evaluation categories described herein. The bidder is cautioned that it is the bidder's sole responsibility to submit necessary information. The State of Missouri is under no obligation to solicit any information if it is not included with the bid. The bidder's failure to submit

information with the bid, including Pricing and Renewal information, may cause an adverse impact on the evaluation of the bid.

- 3.1.5 Questions Regarding the IFB - The bidder and the bidder's agents (including subcontractors, employees, consultants, or anyone else acting on their behalf) must direct all of their questions or comments regarding the IFB, the evaluation, etc., to the buyer of record indicated on the first page of this IFB.
- a. The buyer may be contacted via e-mail or phone as shown on the first page, or via facsimile to 573-526-9817.
 - b. Bidders are advised that any questions received less than ten calendar days prior to the IFB opening date may not be answered.
 - c. Except as stated below, the bidder and the bidder's agents may not contact any other state employee regarding the IFB, the evaluation, etc., during the solicitation and evaluation process.
 - 1) Inappropriate contacts are grounds for suspension and/or exclusion from specific procurements.
 - 2) The bidder may contact the Office of Supplier and Workforce Diversity (OSWD) regarding MBE/WBE certification or subcontracting with MBE/WBE companies.
 - 3) Bidders and their agents who have questions regarding this matter should contact the buyer.

3.2 Evaluation and Award Process:

- 3.2.1 After determining that a bid satisfies the mandatory requirements stated in the Invitation for Bid, the evaluator(s) shall use both objective analysis and subjective judgment in conducting a comparative assessment of the bid in accordance with the evaluation criteria stated below:
- a. Cost.....50 points
 - b. Experience, Reliability, Expertise of Personnel, and Method of Performance50 points
- 3.2.2 After an initial screening process, a question and answer conference or interview may be conducted with the bidder, if deemed necessary by the Division of Purchasing and Materials Management. In addition, the bidder may be asked to make an oral presentation of their bid during the conference. Attendance cost at the conference shall be at the bidder's expense. All arrangements and scheduling shall be coordinated by the Division of Purchasing and Materials Management.
- 3.2.3 Preference for Organizations for the Blind and Sheltered Workshops - Pursuant to 34.165 RSMo, a five (5) bonus point preference shall be granted to bidders including products and/or services manufactured, produced or assembled by a qualified nonprofit organization for the blind established pursuant to 41 U.S.C. sections 46 to 48c or a sheltered workshop holding a certificate of approval from the Department of Elementary and Secondary Education pursuant to section 178.920 RSMo. Five bonus points will be added to the total evaluation points for bidders qualifying for the preference.
- a. If the bidder is an organization for the blind or sheltered workshop, the bidder should provide evidence of qualifications (i.e., copy of certificate or certificate number).
 - b. If the bidder is utilizing an organization for the blind or a sheltered workshop as a subcontractor, the bidder should submit: (1) a letter of intent signed by the organization for the blind or sheltered workshop describing the products/services they will provide and indicating their commitment to aid the contractor's performance under the prospective state contract and (2) evidence that the subcontractor qualifies as an organization for the blind or sheltered workshop.
 - c. A list of Missouri sheltered workshops can be found at the following internet address:
<http://www.dese.mo.gov/divspeced/shelteredworkshops/index.html>.

3.3 Evaluation of Cost:

3.3.1 Objective Evaluation of Cost – The cost evaluation shall be based on the sum of firm fixed hourly price stated on the Pricing Page for the original period and the maximum hourly prices stated on the Pricing Page for each potential renewal period.

- a. Cost evaluation points shall be determined from the result of the calculation stated above using the following formula:

$$\frac{\text{Lowest Responsive Bidder's Price}}{\text{Compared Bidder's Price}} \quad \times \quad 50 \quad = \quad \text{Cost evaluation points}$$

3.4 Evaluation of Bidder's Experience, Reliability, Expertise, and Method of Performance:

3.4.1 Experience and reliability of the bidder and expertise of the bidder's personnel will be considered subjectively in the evaluation process. Therefore, the bidder is advised to submit information concerning the bidder's organization, information documenting the bidder's experience in past performances related to the requirements of this IFB, whether from the bidder's organization or from a proposed subcontractor, and information documenting the qualifications of the personnel proposed by the bidder to perform the requirements of this IFB.

- a. Prior Experience - The bidder should provide information related to previous and current services/contracts of the bidder or bidder's proposed subcontractor where performance was similar to the required services of this IFB. The information may be shown on Exhibit A or in a similar manner.
- b. Personnel Expertise - The bidder should utilize Exhibit B for summarizing the personnel information for proposed key personnel and may also include submit resumes with additional information.
 - 1) The information provided should be structured to emphasize relevant qualifications and experience of the personnel in completing contracts/performing services of a similar size and scope to the requirements of this document.
 - 2) Information submitted should clearly identify previous experience of the person in performing similar services and should include beginning and ending dates, a description of the role of the person in such performances, results of the services performed, and whether the person is proposed for the same services for the State of Missouri.
- c. Personnel Qualifications - If personnel are not yet hired, the bidder should provide detailed descriptions of the required employment qualifications; and detailed job descriptions of the position to be filled, including the type of person proposed to be hired.
- d. Licenses - The bidder should submit a copy of all licenses and/or certifications related to the performance of the services required herein that are held by the personnel proposed to provide such services. If not submitted with the bid, the State of Missouri reserves the right to request and obtain a copy of any license or certification required to perform the defined services prior to contract award.

3.4.2 Bids will be subjectively evaluated based on the bidder's plan for performing the requirements of the IFB. Exhibit C is provided for the bidder's use in providing information about the proposed method of performance. In addition, the bidder should provide the following:

- a. Staffing Plan/Organizational Chart - The bidder should provide an organizational chart showing the staffing and lines of authority for the key personnel to be used. The organizational chart should include (1) The relationship of service personnel to management and support personnel, (2) The names of the personnel and the working titles of each, and (3) Any proposed subcontractors including management, supervisory, and other key personnel.

b. Economic Advantage to Missouri - The bidder should address the following:

- 1) Provide a description of the proposed services that will be performed and/or the proposed products that will be provided by Missourians and/or Missouri products.
- 2) Provide a description of the economic impact returned to the State of Missouri through tax revenue obligations.
- 3) Provide a description of the company's economic presence within the State of Missouri (e.g., type of facilities: sales offices; sales outlets; divisions; manufacturing; warehouse; other), including Missouri employee statistics.

3.4.3 Business Compliance - The bidder must be in compliance with the laws regarding conducting business in the State of Missouri. The bidder certifies by signing the signature page of this original document and any amendment signature page(s) or by submitting an on-line bid that the bidder and any proposed subcontractors either are presently in compliance with such laws or shall be in compliance with such laws prior to any resulting contract award. The bidder shall provide documentation of compliance upon request by the Division of Purchasing and Materials Management. The compliance to conduct business in the state shall include, but not necessarily be limited to:

- a. Registration of business name (if applicable)
- b. Certificate of authority to transact business/certificate of good standing (if applicable)
- c. Taxes (e.g., city/county/state/federal)
- d. State and local certifications (e.g., professions/occupations/activities)
- e. Licenses and permits (e.g., city/county license, sales permits)
- f. Insurance (e.g., worker's compensation/unemployment compensation)

4. PRICING PAGE

- 4.1 Medical Care Utilization Review Services** - The bidder shall provide a firm, fixed price for the original contract period and a maximum price for each potential renewal period for providing the services in accordance with the provisions and requirements of this IFB. All costs associated with providing the required services shall be included in the stated price(s). *c/s code 95337*

Description	Original Period <i>Firm, Fixed Price</i>	1 st Renewal Period <i>Maximum Price</i>	2 nd Renewal Period <i>Maximum Price</i>	3 rd Renewal Period <i>Maximum Price</i>	4 th Renewal Period <i>Maximum Price</i>
Medical Care Utilization Review Services	\$_____ <i>per hour</i> Line 001	\$_____ <i>per hour</i> Line 002	\$_____ <i>per hour</i> Line 003	\$_____ <i>per hour</i> Line 004	\$_____ <i>per hour</i> Line 005

- 4.2 Organizations for the Blind or Sheltered Workshop** - If the bidder qualifies as either a nonprofit organization for the blind or a sheltered workshop, or if the bidder is proposing to include products and/or services manufactured, produced, or assembled by such an organization, the bidder should identify the name of the organization in the space below and should attach all supporting documentation, as referenced elsewhere herein.

Name & Address of Organization for Blind/Sheltered Workshop:	
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- 4.3 Outside United States** - If any products and/or services offered under this IFB are being manufactured or performed at sites outside the United States, the bidder **MUST** disclose such fact and provide details in the space below or on an attached page.

Are products and/or services being manufactured or performed at sites outside the United States?	Yes _____	No _____
Describe and provide details:		

- 4.4 Employee/Conflict of Interest** - Bidders who are employees of the State of Missouri, a member of the General Assembly or a statewide elected official must comply with Sections 105.450 to 105.458 RSMo regarding conflict of interest. If the bidder and/or any of the owners of the bidder's organization are currently an employee of the State of Missouri, a member of the General Assembly or a statewide elected official, please provide the following information:

Name of State Employee, General Assembly Member, or Statewide Elected Official:	
	In what office/agency are they employed?
	Employment Title:
Percentage of ownership interest in bidder's organization:	_____ %

EXHIBIT A**PRIOR EXPERIENCE**

The bidder should copy and complete this form for each reference being submitted as demonstration of the bidder and subcontractor's prior experience. In addition, the bidder is advised that if the contact person listed for the reference is unable to be reached during the evaluation, the listed experience may not be considered.

Bidder Name or Subcontractor Name: _____	
Reference Information (Prior Services Performed For:)	
Name of Reference Company:	
Address of Reference Company ✓ Street Address ✓ City, State, Zip	
Reference Contact Person Information: ✓ Name ✓ Phone # ✓ E-mail Address	
Dates of Prior Services:	
Dollar Value of Prior Services	
Description of Prior Services Performed	

EXHIBIT B**PERSONNEL EXPERTISE SUMMARY**

(Complete this Exhibit for personnel proposed. Resumes or summaries of key information may be provided)

Personnel	Background and Expertise of Personnel and Planned Duties
1. _____ (Name) _____ (Title) _____ (Proposed Role/Function)	
2. _____ (Name) _____ (Title) _____ (Proposed Role/Function)	
3. _____ (Name) _____ (Title) _____ (Proposed Role/Function)	
4. _____ (Name) _____ (Title) _____ (Proposed Role/Function)	
5. _____ (Name) _____ (Title) _____ (Proposed Role/Function)	
6. _____ (Name) _____ (Title) _____ (Proposed Role/Function)	

EXHIBIT C**METHOD OF PERFORMANCE**

The bidder should use this Exhibit, or any format desired, to present a written plan for performing the requirements specified in this Invitation for Bid.

STATE OF MISSOURI
DIVISION OF PURCHASING AND MATERIALS MANAGEMENT
TERMS AND CONDITIONS -- INVITATION FOR BID

1. TERMINOLOGY/DEFINITIONS

Whenever the following words and expressions appear in an Invitation for Bid (IFB) document or any amendment thereto, the definition or meaning described below shall apply.

- a. **Agency and/or State Agency** means the statutory unit of state government in the State of Missouri for which the equipment, supplies, and/or services are being purchased by the **Division of Purchasing and Materials Management (DPMM)**. The agency is also responsible for payment.
- b. **Amendment** means a written, official modification to an IFB or to a contract.
- c. **Attachment** applies to all forms which are included with an IFB to incorporate any informational data or requirements related to the performance requirements and/or specifications.
- d. **Bid Opening Date and Time** and similar expressions mean the exact deadline required by the IFB for the receipt of sealed bids.
- e. **Bidder** means the person or organization that responds to an IFB by submitting a bid with prices to provide the equipment, supplies, and/or services as required in the IFB document.
- f. **Buyer** means the procurement staff member of the DPMM. The **Contact Person** as referenced herein is usually the Buyer.
- g. **Contract** means a legal and binding agreement between two or more competent parties, for a consideration for the procurement of equipment, supplies, and/or services.
- h. **Contractor** means a person or organization who is a successful bidder as a result of an IFB and who enters into a contract.
- i. **Exhibit** applies to forms which are included with an IFB for the bidder to complete and submit with the sealed bid prior to the specified opening date and time.
- j. **Invitation for Bid (IFB)** means the solicitation document issued by the DPMM to potential bidders for the purchase of equipment, supplies, and/or services as described in the document. The definition includes these Terms and Conditions as well as all Pricing Pages, Exhibits, Attachments, and Amendments thereto.
- k. **May** means that a certain feature, component, or action is permissible, but not required.
- l. **Must** means that a certain feature, component, or action is a mandatory condition. Failure to provide or comply will result in a bid being considered non-responsive.
- m. **Pricing Page(s)** applies to the form(s) on which the bidder must state the price(s) applicable for the equipment, supplies, and/or services required in the IFB. The pricing pages must be completed and submitted by the bidder with the sealed bid prior to the specified bid opening date and time.
- n. **RSMo (Revised Statutes of Missouri)** refers to the body of laws enacted by the Legislature which govern the operations of all agencies of the State of Missouri. Chapter 34 of the statutes is the primary chapter governing the operations of DPMM.
- o. **Shall** has the same meaning as the word **must**.
- p. **Should** means that a certain feature, component and/or action is desirable but not mandatory.

2. APPLICABLE LAWS AND REGULATIONS

- a. The contract shall be construed according to the laws of the State of Missouri. The contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract to the extent that the same may be applicable.
- b. To the extent that a provision of the contract is contrary to the Constitution or laws of the State of Missouri or of the United States, the provisions shall be void and unenforceable. However, the balance of the contract shall remain in force between the parties unless terminated by consent of both the contractor and the DPMM.
- c. The contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations.
- d. The contractor must timely file and pay all Missouri sales, withholding, corporate and any other required Missouri tax returns and taxes, including interest and additions to tax.
- e. The exclusive venue for any legal proceeding relating to or arising out of the IFB or resulting contract shall be in the Circuit Court of Cole County, Missouri.

3. OPEN COMPETITION/INVITATION FOR BID DOCUMENT

- a. It shall be the bidder's responsibility to ask questions, request changes or clarification, or otherwise advise the DPMM if any language, specifications or requirements of an IFB appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements stated in the IFB to a single source. Any and all communication from bidders regarding specifications, requirements, competitive bid process, etc., must be directed to the buyer from the DPMM, unless the IFB specifically refers the bidder to another contact. Such communication should be received at least ten calendar days prior to the official bid opening date.
- b. Every attempt shall be made to ensure that the bidder receives an adequate and prompt response. However, in order to maintain a fair and equitable bid process, all bidders will be advised, via the issuance of an amendment to the IFB, of any relevant or pertinent information related to the procurement. Therefore, bidders are advised that unless specified elsewhere in the IFB, any questions received less than ten calendar days prior to the IFB opening date may not be answered.
- c. Bidders are cautioned that the only official position of the State of Missouri is that which is issued by the DPMM in the IFB or an amendment thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement.
- d. The DPMM monitors all procurement activities to detect any possibility of deliberate restraint of competition, collusion among bidders, price-fixing by bidders, or any other anticompetitive conduct by bidders which appears to violate state and federal antitrust laws. Any suspected violation shall be referred to the Missouri Attorney General's Office for appropriate action.
- e. The IFB is available for viewing and downloading on the state's On-Line Bidding/Vendor Registration System website. Premium registered bidders are electronically notified of the bid opportunity based on the information maintained in the State of Missouri's vendor database. If a Premium registered bidder's e-mail address is incorrect, the bidder must update the e-mail address themselves on the state's On-Line Bidding/Vendor Registration System website.
- f. The DPMM reserves the right to officially amend or cancel an IFB after issuance. Premium registered bidders who received e-mail notification of the bid opportunity when the IFB was established and Premium registered bidders who have responded to the IFB on-line prior to an amendment being issued will receive e-mail notification of the amendment(s). Premium registered bidders who received e-mail notification of the bid opportunity when the IFB was established and Premium registered bidders who have responded to the bid on-line prior to a cancellation being issued will receive e-mail notification of a cancellation issued prior to the exact closing time and date specified in the IFB.

4. PREPARATION OF BIDS

- a. Bidders **must** examine the entire IFB carefully. Failure to do so shall be at bidder's risk.
- b. Unless otherwise specifically stated in the IFB, all specifications and requirements constitute minimum requirements. All bids must meet or exceed the stated specifications and requirements.
- c. Unless otherwise specifically stated in the IFB, any manufacturer names, trade names, brand names, information and/or catalog numbers listed in a specification and/or requirement are for informational purposes only and are not intended to limit competition. The bidder may offer any brand which meets or exceeds the specification for any item, but must state the manufacturer's name and model number for any such brands in the bid. In addition, the bidder shall explain, in detail, (1) the reasons why the proposed equivalent meets or exceeds the specifications and/or requirements and (2) why the proposed equivalent should not be considered an exception thereto. Bids which do not comply with the requirements and specifications are subject to rejection without clarification.
- d. Bids lacking any indication of intent to bid an alternate brand or to take an exception shall be received and considered in complete compliance with the specifications and requirements as listed in the IFB.
- e. In the event that the bidder is an agency of state government or other such political subdivision which is prohibited by law or court decision from complying with certain provisions of an IFB, such a bidder may submit a bid which contains a list of statutory limitations and identification of those prohibitive clauses which will be modified via a clarification conference between the DPMM and the bidder, if such bidder is selected for contract award. The clarification conference will be conducted in order to agree to language that reflects the intent and compliance of such law and/or court order and the IFB. Any such bidder needs to include in the bid, a complete list of statutory references and citations for each provision of the IFB which is affected by this paragraph.
- f. All equipment and supplies offered in a bid must be new, of current production, and available for marketing by the manufacturer unless the IFB clearly specifies that used, reconditioned, or remanufactured equipment and supplies may be offered.
- g. Prices shall include all packing, handling and shipping charges FOB destination, freight prepaid and allowed unless otherwise specified in the IFB.
- h. Prices bid shall remain valid for 90 days from bid opening unless otherwise indicated. If the bid is accepted, prices shall be firm for the specified contract period.
- i. Any foreign bidder not having an Employer Identification Number assigned by the United States Internal Revenue Service (IRS) must submit a completed IRS Form W-8 prior to or with the submission of their bid in order to be considered for award.

5. SUBMISSION OF BIDS

- a. Premium registered bidders may submit bids electronically as permitted by the IFB through the State of Missouri's On-Line Bidding/Vendor Registration System website or hard copy delivered to the DPMM office. Standard registered bidders or bidders that have not registered on the On-Line Bidding/Vendor Registration System website may submit bids hard copy delivered to the DPMM office. Delivered bids must be sealed in an envelope or container, and received in the DPMM office located at 301 West High St, Rm 630 in Jefferson City, MO no later than the exact opening time and date specified in the IFB. All bids must (1) be submitted by a duly authorized representative of the bidder's organization, (2) contain all information required by the IFB, and (3) be priced as required. Hard copy bids may be mailed to the DPMM post office box address. However, it shall be the responsibility of the bidder to ensure their bid is in the DPMM office (address listed above) no later than the exact opening time and date specified in the IFB.
- b. The sealed envelope or container containing a bid should be clearly marked on the outside with (1) the official IFB number and (2) the official opening date and time. Different bids should not be placed in the same envelope, although copies of the same bid may be placed in the same envelope.
- c. A bid submitted electronically by a Premium registered bidder may be modified on-line prior to the official opening date and time. A bid which has been delivered to the DPMM office, may be modified by signed, written notice which has been received by the DPMM prior to the official opening date and time specified. A bid may also be modified in person by the bidder or its authorized representative, provided proper identification is presented before the official opening date and time. Telephone or telegraphic requests to modify a bid shall not be honored.
- d. A bid submitted electronically by a Premium registered bidder may be canceled on-line prior to the official opening date and time. A bid which has been delivered to the DPMM office, may only be withdrawn by a signed, written notice or facsimile which has been received by the DPMM prior to the official opening date and time specified. A bid may also be withdrawn in person by the bidder or its authorized representative, provided proper identification is presented before the official opening date and time. Telephone, e-mail, or telegraphic requests to withdraw a bid shall not be honored.
- e. When submitting a bid electronically, the Premium registered bidder indicates acceptance of all IFB terms and conditions by clicking on the "Submit" button on the Electronic Bid Response Entry form. Bidders delivering a hard copy bid to DPMM must sign and return the IFB cover page or, if applicable, the cover page of the last amendment thereto in order to constitute acceptance by the bidder of all IFB terms and conditions. Failure to do so may result in rejection of the bid unless the bidder's full compliance with those documents is indicated elsewhere within the bidder's response.

6. BID OPENING

- a. Bid openings are public on the opening date and at the opening time specified on the IFB document. Names, locations, and prices of respondents shall be read at the bid opening. Premium registered bidders may view the names and prices of the respondents on the state's On-Line Bidding/Vendor Registration System website after the official opening date and time. The DPMM will not provide prices or other bid information via the telephone.
- b. Bids which are not received in the DPMM office prior to the official opening date and time shall be considered late, regardless of the degree of lateness, and normally will not be opened. Late bids may only be opened under extraordinary circumstances in accordance with 1 CSR 40-1.050.

7. PREFERENCES

- a. In the evaluation of bids, preferences shall be applied in accordance with Chapter 34 RSMo. Contractors should apply the same preferences in selecting subcontractors.
- b. By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri and to all firms, corporations or individuals doing business as Missouri firms, corporations or individuals. Such preference shall be given when quality is equal or better and delivered price is the same or less.
- c. In accordance with Executive Order 05-30, contractors are encouraged to utilize certified minority and women-owned businesses in selecting subcontractors.

8. EVALUATION/AWARD

- a. Any clerical error, apparent on its face, may be corrected by the buyer before contract award. Upon discovering an apparent clerical error, the buyer shall contact the bidder and request clarification of the intended bid. The correction shall be incorporated in the notice of award. Examples of apparent clerical errors are: 1) misplacement of a decimal point; and 2) obvious mistake in designation of unit.

- b. Any pricing information submitted by a bidder shall be subject to evaluation if deemed by the DPMM to be in the best interest of the State of Missouri.
- c. The bidder is encouraged to propose price discounts for prompt payment or propose other price discounts that would benefit the State of Missouri. However, unless otherwise specified in the IFB, pricing shall be evaluated at the maximum potential financial liability to the State of Missouri.
- d. Awards shall be made to the bidder whose bid (1) complies with all mandatory specifications and requirements of the IFB and (2) is the lowest and best bid, considering price, responsibility of the bidder, and all other evaluation criteria specified in the IFB and (3) complies with Sections 34.010 and 34.070 RSMo and Executive Order 04-09.
- e. In the event all bidders fail to meet the same mandatory requirement in an IFB, DPMM reserves the right, at its sole discretion, to waive that requirement for all bidders and to proceed with the evaluation. In addition, the DPMM reserves the right to waive any minor irregularity or technicality found in any individual bid.
- f. The DPMM reserves the right to reject any and all bids. When all bids are non-responsive or otherwise unacceptable and circumstances do not permit a rebid, DPMM may negotiate for the required supplies.
- g. When evaluating a bid, the State of Missouri reserves the right to consider relevant information and fact, whether gained from a bid, from a bidder, from bidder's references, or from any other source.
- h. Any information submitted with the bid, regardless of the format or placement of such information, may be considered in making decisions related to the responsiveness and merit of a bid and the award of a contract.
- i. Any award of a contract shall be made by notification from the DPMM to the successful bidder. The DPMM reserves the right to make awards by item, group of items, or an all or none basis. The grouping of items awarded shall be determined by DPMM based upon factors such as item similarity, location, administrative efficiency, or other considerations in the best interest of the State of Missouri.
- j. All bids and associated documentation which were submitted on or before the official opening date and time will be considered open records pursuant to Section 610.021 RSMo following the official opening of bids.
- k. The DPMM posts all bid results on the On-line Bidding/Vendor Registration System website for Premium registered bidders to view for a reasonable period after bid award. The DPMM maintains images of all bid file material for review. Bidders who include an e-mail address with their bid will be notified of the award results via e-mail.
- l. The DPMM reserves the right to request clarification of any portion of the bidder's response in order to verify the intent of the bidder. The bidder is cautioned, however, that its response may be subject to acceptance or rejection without further clarification.
- m. Any bid award protest must be received within ten (10) calendar days after the date of award in accordance with the requirements of 1 CSR 40-1.050 (10).
- n. The final determination of contract award(s) shall be made by DPMM.

9. CONTRACT/PURCHASE ORDER

- a. By submitting a bid, the bidder agrees to furnish any and all equipment, supplies and/or services specified in the IFB, at the prices quoted, pursuant to all requirements and specifications contained therein.
- b. A binding contract shall consist of: (1) the IFB and any amendments thereto, (2) the contractor's response (bid) to the IFB, (3) clarification of the bid, if any, and (4) DPMM's acceptance of the response (bid) by "notice of award" or by "purchase order." All Exhibits and Attachments included in the IFB shall be incorporated into the contract by reference.
- c. A notice of award issued by the State of Missouri does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services for the State of Missouri, the contractor must receive a properly authorized purchase order unless the purchase is equal to or less than \$3,000. State purchases equal to or less than \$3,000 may be processed with a purchase order or other form of authorization given to the contractor at the discretion of the state agency.
- d. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change to the contract, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and the DPMM or by a modified purchase order prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification to the contract.

10. INVOICING AND PAYMENT

- a. The State of Missouri does not pay state or federal taxes unless otherwise required under law or regulation.
- b. The statewide financial management system has been designed to capture certain receipt and payment information. For each purchase order received, an invoice must be submitted that references the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- c. The contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the DPMM.
- d. Payment for all equipment, supplies, and/or services required herein shall be made in arrears unless otherwise indicated in the IFB.
- e. The State of Missouri assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any unauthorized quantity is subject to the state's rejection and shall be returned at the contractor's expense.
- f. All invoices for equipment, supplies, and/or services purchased by the State of Missouri shall be subject to late payment charges as provided in Section 34.055 RSMo.
- g. The State of Missouri reserves the right to purchase goods and services using the state purchasing card.

11. DELIVERY

Time is of the essence. Deliveries of equipment, supplies, and/or services must be made no later than the time stated in the contract or within a reasonable period of time, if a specific time is not stated.

12. INSPECTION AND ACCEPTANCE

- a. No equipment, supplies, and/or services received by an agency of the state pursuant to a contract shall be deemed accepted until the agency has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
- c. The State of Missouri reserves the right to return any such rejected shipment at the contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.

- d. The State of Missouri's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the state may have.

13. WARRANTY

- a. The contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by the DPMM, (2) be fit and sufficient for the purpose expressed in the IFB, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.
- b. Such warranty shall survive delivery and shall not be deemed waived either by reason of the state's acceptance of or payment for said equipment, supplies, and/or services.

14. CONFLICT OF INTEREST

- a. Officials and employees of the state agency, its governing body, or any other public officials of the State of Missouri must comply with Sections 105.452 and 105.454 RSMo regarding conflict of interest.
- b. The contractor hereby covenants that at the time of the submission of the bid the contractor has no other contractual relationships which would create any actual or perceived conflict of interest. The contractor further agrees that during the term of the contract neither the contractor nor any of its employees shall acquire any other contractual relationships which create such a conflict.

15. REMEDIES AND RIGHTS

- a. No provision in the contract shall be construed, expressly or implied, as a waiver by the State of Missouri of any existing or future right and/or remedy available by law in the event of any claim by the State of Missouri of the contractor's default or breach of contract.
- b. The contractor agrees and understands that the contract shall constitute an assignment by the contractor to the State of Missouri of all rights, title and interest in and to all causes of action that the contractor may have under the antitrust laws of the United States or the State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or procured by the contractor in the fulfillment of the contract with the State of Missouri.

16. CANCELLATION OF CONTRACT

- a. In the event of material breach of the contractual obligations by the contractor, the DPMM may cancel the contract. At its sole discretion, the DPMM may give the contractor an opportunity to cure the breach or to explain how the breach will be cured. The actual cure must be completed within no more than 10 working days from notification, or at a minimum the contractor must provide DPMM within 10 working days from notification a written plan detailing how the contractor intends to cure the breach.
- b. If the contractor fails to cure the breach or if circumstances demand immediate action, the DPMM will issue a notice of cancellation terminating the contract immediately.
- c. If the DPMM cancels the contract for breach, the DPMM reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the DPMM deems appropriate and charge the contractor for any additional costs incurred thereby.
- d. The contractor understands and agrees that funds required to fund the contract must be appropriated by the General Assembly of the State of Missouri for each fiscal year included within the contract period. The contract shall not be binding upon the state for any period in which funds have not been appropriated, and the state shall not be liable for any costs associated with termination caused by lack of appropriations.

17. COMMUNICATIONS AND NOTICES

Any notice to the contractor shall be deemed sufficient when deposited in the United States mail postage prepaid, transmitted by facsimile, transmitted by e-mail or hand-carried and presented to an authorized employee of the contractor.

18. BANKRUPTCY OR INSOLVENCY

- a. Upon filing for any bankruptcy or insolvency proceeding by or against the contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the contractor must notify the DPMM immediately.
- b. Upon learning of any such actions, the DPMM reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the contractor responsible for damages.

19. INVENTIONS, PATENTS AND COPYRIGHTS

The contractor shall defend, protect, and hold harmless the State of Missouri, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the contractor's performance or products produced under the terms of the contract.

20. NON-DISCRIMINATION AND AFFIRMATIVE ACTION

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall agree not to discriminate against recipients of services or employees or applicants for employment on the basis of race, color, religion, national origin, sex, age, disability, or veteran status. If the contractor or subcontractor employs at least 50 persons, they shall have and maintain an affirmative action program which shall include:

- a. A written policy statement committing the organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;
- b. The identification of a person designated to handle affirmative action;
- c. The establishment of non-discriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure, and standards applicable to layoff, recall, discharge, demotion, and discipline;
- d. The exclusion of discrimination from all collective bargaining agreements; and
- e. Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.

If discrimination by a contractor is found to exist, the DPMM shall take appropriate enforcement action which may include, but not necessarily be limited to, cancellation of the contract, suspension, or debarment by the DPMM until corrective action by the contractor is made and ensured, and referral to the Attorney General's Office, whichever enforcement action may be deemed most appropriate.

21. AMERICANS WITH DISABILITIES ACT

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (ADA).

22. FILING AND PAYMENT OF TAXES

The commissioner of administration and other agencies to which the state purchasing law applies shall not contract for goods or services with a vendor if the vendor or an affiliate of the vendor makes sales at retail of tangible personal property or for the purpose of storage, use, or consumption in this state but fails to collect and properly pay the tax as provided in chapter 144, RSMo. For the purposes of this section, "affiliate of the vendor" shall mean any person or entity that is controlled by or is under common control with the vendor, whether through stock ownership or otherwise. Therefore bidder's failure to maintain compliance with chapter 144, RSMo may eliminate their bid from consideration for award.

23. TITLES

Titles of paragraphs used herein are for the purpose of facilitating reference only and shall not be construed to infer a contractual construction of language.

Revised 02/10/06